

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
JOHN H. HAMILTON, SR.	§	CASE NO. 10-35770
DEBTOR	§	(Chapter 7)
	§	
<hr/>	§	
Bank of America, N.A. as successor	§	
to Wells Fargo, N.A. as Trustee for the	§	
registered holders of Wachovia Bank	§	
Commercial Mortgage Trust, Commercial	§	
Mortgage Pass-Through Certificates,	§	
Series 2006-C23	§	
	§	
	§	
Plaintiff	§	ADV. PRO. NO. 11-03020
	§	
v.	§	
	§	
John H. Hamilton, Sr.	§	
Defendant	§	

JOINT MOTION TO MODIFY SCHEDULING ORDER

Now comes, Plaintiff, Bank of America, N.A. as successor to Wells Fargo, N.A. as Trustee for the registered holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-C23 (the “Plaintiff”) and John H. Hamilton, Sr. (the “Defendant”) and files this Joint Motion to Modify Scheduling Order as follows:

I. JURISDICTION

1. The Court has jurisdiction over this adversary pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicates for this Motion are 11 U.S.C. § 105 and FEDERAL RULE OF BANKRUPTCY PROCEDURE 9006(b)(1).

II. Brief Background

3. The Complaint initiating this adversary proceeding was filed January 14, 2011. [*Docket No. 1*]. The Complaint contains three (3) counts seeking to except the Plaintiff's debt against the Defendant under 11 U.S.C. §§523 (a)(2)(A) & (B) and §523(a)(6).

4. Defendant's counsel, Jeff Carruth, accepted service of the summons and Complaint by agreement on or about February 9, 2011.

5. In lieu of filing an Answer, Defendant filed its Motion to Dismiss for Failure to State a Claim on February 22, 2011 (the "Motion to Dismiss") [*Docket No. 9*] wherein the Defendant seeks to have Count 3 of the Complaint brought under 11 U.S.C. §523(a)(6) dismissed. Plaintiff filed its Response to the Motion to Dismiss on March 28, 2011 [*Docket No. 11*].

6. The court has set a hearing on the Defendant's Motion to Dismiss for May 24, 2011.

7. The Comprehensive Scheduling, Pretrial and Trial Order (the "Scheduling Order") requires all discovery to be completed no later than 150 days after the Filing Date. Accordingly, all discovery would have to be completed by June 13, 2011 (the "Discovery Deadline").

8. With the hearing on the Defendant's Motion to Dismiss Count 3 of the Complaint not scheduled to be heard until May 24, 2011, it is unlikely that the Defendant will have even filed its formal answer to the Complaint by the date discovery is to be completed.

III. RELIEF REQUESTED

9. The parties respectfully request that the deadline for completion of discovery be extended to August 30, 2011.

10. An extension of deadlines set in bankruptcy may be granted pursuant to FEDERAL RULE OF BANKRUPTCY PROCEDURE 9006(b)(1). RULE 9006(b)(1) permits extension of time for cause shown when the request for extension is made within the original time Period. FED. R. BANKR. P. 9006(b)(1).

11. In this case, the parties request is made within the original time period. Further, cause exists to extend the Discovery Deadline to August 30, 2011 because the Defendant has not filed its answer to the Complaint, compromising both parties ability to take discovery in this case.

12. Extension of the Discovery Deadline will not necessarily affect other deadlines in the Scheduling Order. The Pretrial Conference is scheduled for September 22, 2011. Trial is to be held the week of September 26, 2011.

IV. CONCLUSION AND PRAYER

13. For the reasons stated above, cause exists to extend the Discovery Deadline to August 30, 2011.

WHEREFORE, PREMISES CONSIDERED, Plaintiff and Defendant respectfully pray this Court grant this Motion and extend the Discovery Deadline in the Scheduling Order to August 30, 2011 without prejudice to moving the Court for further extensions or other relief . Plaintiff further prays for any other relief to which it may be justly entitled.

Dated: May 13, 2011.

Respectfully Submitted
QUILLING, SELANDER, LOWNDS,
WINSLETT & MOSER, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By: /s/ John Paul Stanford
John Paul Stanford
Texas Bar No. 19037350
Jstanford@qslwm.com

ATTORNEYS FOR BANK OF AMERICA, N.A. SUCCESSOR
TO WELLS FARGO, N.A. AS TRUSTEE FOR THE
REGISTERED HOLDERS OF WACHOVIA BANK
COMMERCIAL MORTGAGE TRUST, COMMERCIAL
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES
2006-C23

WEYCER, KAPLAN, PULASKI
& ZUBER, P.C.
3030 Matlock Rd., Suite 201
Arlington, TX 76015
(817) 795-5046 (Telephone)
(817) 666-5322 (Facsimile)

By: /s/ Jeff Carruth
Jeff Carruth
Texas Bar No. 24001846

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2011, the above pleading was served via U.S.
First Class mail to the parties set forth below.

Counsel for the Defendant:

Andrew M. Caplan
WEYCER, KAPLAN, PULASKI
& ZUBER, P.C.
1400 Summit Tower
Eleven Greenway Plaza
Houston, Texas 77046

Jeff Carruth
WEYCER, KAPLAN, PULASKI
& ZUBER, P.C.
3030 Matlock Rd., Suite 201
Arlington, TX 76015

/s/ John Paul Stanford
John Paul Stanford